

## REMARKS

Applicants respectfully acknowledge and extend their appreciation for the prompt response to the amendment that was filed on January 4, 2006. In this most recent non-final office action, dated March 23, 2006, the examiner has issued a §102 rejection of claims 1-3, 5-8, 10-13, 15-18 and 20-22, and §103 rejection of claim 4, 9, 14 and 19. Both of the rejections rely upon Brewer et al Patent, US 6,876,657 B1 as a principal reference. The obviousness rejection combines Brewer et al with the teachings of the newly cited Dockser Patent, US 5,860,119.

By this amendment, the applicants have revised all of the independent claims 1, 6, 11, 16, 21 and 22 to include the features of claims 4, 9, 14 and 19, thereby specifically overcoming the examiner's argument that these claims are anticipated by the Brewer et al Patent, US 6,876,657 B1.

Applicants respectfully submit that the deep processing as covered in their claims is not a feature described by, or rendered obvious over, Brewer et al in view of Dockser.

Searching beyond a packet header can unduly increase the amount of time consumed by a network server in processing packets. The present invention is focused on a system and method for the expeditious and orderly handling of packets in such situations while maintaining the packet sequence.

With the amendment of all of the independent claims, applicants respectfully submit that the anticipation rejection of these claims, as well as the claims that depend from these claims, may appropriately be withdrawn. Limiting the claims of the present application to providing the input buffer and the output buffer with double sized buffer capacity serves to clearly differentiate the instant invention over the Brewer et al

teachings. Inasmuch as claims 21 and 22 also contain language relating to the double sized buffer capacity for both of the buffers, these claims likewise are distinguishable over Brewer et al.

More specifically, Brewer et al examine the packet headers and perform a filtering function thereon. However, this function appears to be limited to header inspection only and does not entail any “deep packet” processing as claimed by applicants. Therefore, Brewer et al are limited to a rather simplified system of maintaining packet sequence.

Applicants use a buffer capacity which is at least twice the size of the largest frame to be processed. On the other hand, Brewer et al say nothing about the size either of queue 102 which receives inputs having small (<200) bytes or queue 103 which receives inputs having large (>200) bytes. Therefore, in addition to the distinguishing feature of “deep packet” processing that has been added to all of the independent claims by amendment, these claims contain this additional distinguishing feature concerning input and output buffer capacities.

Brewer also deals with so called exception packets which are not handled according to normal sequencing but instead are handled off-line. These exception packets are ordered among themselves independent of the conventional “fast packets”. Applicants’ invention does not make allowances for these exception packets, but instead maintains a strict ordering of all of the data frames entering the input buffer. This limitation is clearly articulated in the preamble of independent claims 1, 6, 16, 21 and 22, as well as element e) of independent claim 11. Accordingly, although applicants’ claims do not specifically refer to the exception packets noted by Brewer et al, the claims

nevertheless are clear that they do not accommodate exception packets while maintaining a strict sequence of processing and forwarding of the packets. Therefore, this feature of Brewer et al is not found, nor is it implicit, in the claims of the present application.

These features of the claims as amended clearly overcome the §102 anticipation rejection. It is well recognized that prior art is anticipatory only if every element of the claimed invention is disclosed in a single item of prior art in the form literally defined in the claim. Jamesbury Corp. v. Litton Indus. Products, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); Atlas Powder Co. v. du Pont, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); American Hospital Supply v. Travenol Labs, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984). Inasmuch as Brewer et al do not disclose, or even remotely suggest, deep packet processing of the information packets, the reference cannot serve as prior art needed to support a §102 rejection. More importantly, as noted by the examiner, Brewer et al do not specify a buffer capacity of the size being claimed by applicants. Therefore, there is ample basis for withdrawing the anticipation rejection.

Applicants respectfully submit that the claims as now amended are not obvious in light of the combined teachings of Brewer et al and Dockser. To support an obviousness rejection, it is imperative that the applied art must provide some motivation for the combination. In rejecting claims under 35 U.S.C. §103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1986). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art

references to arrive at the claimed invention. Such reasoning must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

More significantly, the combined teachings of the prior art Brewer et al and Dockser patents do not suggest or imply the presence of input and output buffers, each having double size capacities for the purpose of maintaining a strict ordering of outgoing data packets in the same sequence as incoming packets. Furthermore, there is no suggestion or inference in Dockser that his buffer system would be functional in the Brewer et al sequencing environment. This is particularly evident by his preference of using a single FIFO for bi-directional communication. Using a single FIFO would preclude or impede the concurrent functioning of the input buffer and the output buffers of applicants' invention. It should also be noted that Dockser does not employ a system for synchronizing the sequencing of the buffer inputs and outputs. Accordingly, the suggestion of combining the large capacity buffer of Dockser with the sequencing of Brewer et al is based largely on the teachings of the present invention, rather than on any suggestion in the references themselves. As stated

in W.L. Gore & Associates, Inc. v Garlock, Inc. 721 F.2d 1540, 1553; 220 USPQ 303, 312-313 (Fed. Cir 1983):

“To imbue one of ordinary skill in the art with knowledge of the invention...when no prior art reference or references of record convey or suggest that knowledge is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.”

Applicants respectfully submit that the combination of the teachings of Brewer et al and Dockser as suggested by the examiner clearly falls into this category of hindsight reconstruction. Accordingly, the examiner is respectfully urged to withdraw the obviousness rejection and to allow the claims as now amended.

### CONCLUSION

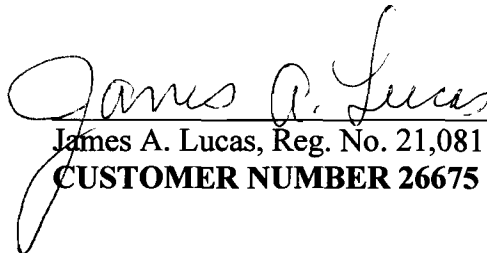
Applicants respectfully submit that the amendment to the claims now places the application in condition for immediate allowance. Accordingly, all of the claims remaining in the application should, therefore, be deemed to be allowable. The examiner is respectfully requested to take such action as is consistent therewith.

If there are any minor matters that can easily be resolved by phone or by email, the examiner is encouraged to contact the undersigned as a step toward resolution.

Reconsideration and allowance are now respectfully requested.

Respectfully submitted,

Date: JUNE 27<sup>th</sup>, 2006

  
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